

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND
UNITED STATES DEPARTMENT OF JUSTICE REVISED
MODEL CERCLA SECTION 122(g)(4) *DE MINIMIS* CONTRIBUTOR
ADMINISTRATIVE ORDER ON CONSENT**

August 2003

This model and any internal procedures adopted for its implementation and use are intended as guidance for employees of the U.S. Department of Justice and U.S. Environmental Protection Agency. They are not rules and do not create legal obligations. The extent to which EPA or DOJ uses them in a particular case will depend upon the facts of the case.

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**REVISED MODEL CERCLA SECTION 122(g)(4) *DE MINIMIS* CONTRIBUTOR
ADMINISTRATIVE ORDER ON CONSENT**

| | | |
|------------------------------------|---|-----------------------------|
| IN THE MATTER OF: |) | |
| |) | U.S. EPA Docket No. _____ |
| |) | |
| [Insert Site Name and Location] |) | |
| |) | |
| Proceeding under Section 122(g)(4) |) | |
| of the Comprehensive Environmental |) | ADMINISTRATIVE ORDER |
| Response, Compensation, and |) | ON CONSENT |
| Liability Act of 1980, as amended, |) | |
| 42 U.S.C. 9622(g)(4) |) | |
| |) | |

I. JURISDICTION

1. This Administrative Order on Consent (“Consent Order” or “Order”) is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency (“EPA”) by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-E [insert reference to Regional redelegation, if any].

2. This Administrative Order on Consent is issued to the persons, corporations, or other entities identified in Appendix A (“Respondents”). Each Respondent agrees to undertake all actions required by this Consent Order. Each Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

3. EPA and Respondents agree that the actions undertaken by Respondents in accordance with this Consent Order do not constitute an admission of any liability by any Respondent. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts or Determinations contained in Sections IV and V, respectively, of this Consent Order.

II. STATEMENT OF PURPOSE

[NOTE: As drafted, this Statement of Purpose assumes that all respondents are making a cash payment, which includes a premium amount, in exchange for a full and final

settlement with EPA for all civil liability under CERCLA Sections 106 and 107 with respect to the site as a whole. This Statement of Purpose will need to be amended if the settlement is of narrower scope with respect to some or all respondents because, *e.g.*, it relates to only one operable unit, or it includes a reservation of rights for cost overruns. When using this or any other Statement of Purpose, be sure that the provision is consistent with the Covenant Not to Sue, the Reservations of Rights, and the definition of “matters addressed” in the Contribution Protection provision.]

4. By entering into this Consent Order, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows Respondents to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a [substantial] number of potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with Respondents for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by other persons, and to provide for full and complete contribution protection for Respondents with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

a. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. “Consent Order” or “Order” shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

c. “Day” shall mean a calendar day. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. “EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.

e. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

f. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.¹

g. “Paragraph” shall mean a portion of this Consent Order identified by an Arabic numeral.

h. “Parties” shall mean EPA and the Respondents.

i. “Respondents” shall mean those persons, corporations, or other entities listed in Appendix A. **[NOTE: Instead of listing the name of each Respondent in Appendix A and the amount of payment by each Respondent in Appendix C, Regions may choose to create one Appendix to serve both purposes.]**

j. “Response costs” shall mean all costs of “response” as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

k. “Section” shall mean a portion of this Consent Order identified by a Roman numeral.

l. “Site” shall mean the _____ Superfund Site, encompassing approximately ____ acres, located [insert address or description of location] in [insert City, County, State] and [insert either “generally shown on the map attached as Appendix B” or “generally designated by the following property description: _____.”]

m. “United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

IV. STATEMENT OF FACTS

¹ The Superfund currently is invested in 52-week MK notes. The interest rate for these MK notes changes on October 1 of each year. Current and historical rates are available online at http://www.epa.gov/budget/finstatement/superfund/int_rate.htm.

6. [In one or more paragraphs, insert site name, location, description, NPL status and brief statement of historical hazardous substance activity at the site.]

7. Hazardous substances have been or are threatened to be released at or from the Site. **[NOTE: Additional information about specific hazardous substances present on- or off-site may be included.]**

8. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. **[OPTIONAL: Insert brief description of response actions undertaken at the site to date by EPA or other persons, noting whether a removal, RI/FS or ROD(s) have been completed. Describe briefly any prior settlements for performance of work at the site.]**

9. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site. **[NOTE: The dollar amount of costs incurred as of a specific date should be included. Describe briefly any previous cost recovery settlements under which any of these costs have been reimbursed to EPA by site PRPs.]**

10. [Identify each respondent and its relationship to the site. If respondents are numerous, state generally that “Each Respondent listed on Appendix A arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by such Respondent, by any other person or entity, at the Site, or accepted a hazardous substance for transport to the Site which was selected by such Respondent.”]

11. [In one or more paragraphs, present in summary fashion the factual basis for EPA's determination in Section V below that the amount of hazardous substances contributed to the site by each respondent and the toxic or other hazardous effects of the substances contributed to the site by each respondent are minimal in comparison to other hazardous substances at the site. The language will vary depending upon the criteria established for the particular settlement. An example follows:

“The amount of hazardous substances contributed to the Site by each Respondent does not exceed [insert either “___% of the hazardous substances at the Site,” or “___ pounds/gallons of materials containing hazardous substances,”] and the hazardous substances contributed by each Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.”] **[NOTE: Where practicable, an attachment listing the volume and general nature of the hazardous substances contributed to the site by each respondent, to the extent available, may be included as an appendix. The total estimated volume of hazardous substances at the site should be noted on the attachment, if one is used.]**

12. EPA estimates that the total response costs incurred and to be incurred at or in

connection with the Site by the EPA Hazardous Substance Superfund and by other persons is [insert either “\$_____” or “between \$_____ and \$_____”]. The payment required to be made by each Respondent pursuant to this Consent Order is a minor portion of this total amount.

[NOTE: The dollar figure inserted should include the total response costs incurred to date as well as the Agency's projection of the total response costs to be incurred during completion of the remedial action at the site. The response cost total should include costs of the United States and any other person at the Site.]

V. DETERMINATIONS

13. Based upon the Statement of Facts set forth above and on the administrative record for this Site, EPA has determined that:

- a. The [insert site name] site is a “facility” as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. Each Respondent is a “person” as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- c. Each Respondent is a “potentially responsible party” within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).
- d. There has been an actual or threatened “release” of a “hazardous substance” from the Site as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).
- e. The actual or threatened “release” caused the incurrence of response costs.
- f. Prompt settlement with each Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).
- g. As to each Respondent, this Consent Order involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).
- h. The amount of hazardous substances contributed to the Site by each Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Respondent are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

[NOTE: If Attorney General approval is not required for this settlement because total past and projected response costs of the United States at the site are not expected to exceed \$500,000, insert the following Paragraph 13(i).]

[i. The total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.]

VI. ORDER

14. Based upon the administrative record for the Site and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby AGREED TO AND ORDERED:

VII. PAYMENT

15. Within 30 days after the effective date of this Consent Order, each Respondent shall pay to the EPA Hazardous Substance Superfund [insert either: “the amount set forth below” or “the amount set forth in Appendix C to this Consent Order”].

16. Each Respondent's payment includes an amount for: a) past response costs incurred at or in connection with the Site; b) projected future response costs to be incurred at or in connection with the Site; and [insert, if a premium is included in the settlement, “c) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any other person, will exceed the estimated total response costs upon which Respondents' payments are based.”] **[NOTE: If some respondents are paying a premium and some are not, Paragraph 16 will need to be redrafted to indicate that there are both premium and non-premium settling respondents.]**

17. Each payment shall be made by certified or cashier's check made payable to “EPA Hazardous Substance Superfund.” Each check, or a letter accompanying each check, shall identify the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number _____, and the EPA docket number for this action, and shall be sent to:

EPA Superfund

[Insert Regional Superfund lockbox number and address]

The total amount to be paid by Respondents pursuant to Paragraph 15 shall be deposited by EPA in the [Site Name] Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

18. At the time of payment, each Respondent shall send notice that such payment has been made to:

[Insert name and address of Regional Attorney and/or Remedial Project Manager and Regional Financial Management Officer]

[NOTE ON REQUIRING ONE COLLECTIVE PAYMENT: If the settlement involves a large number of respondents, it may be appropriate to include alternative instructions under which the respondents are to establish a short-term trust or escrow account to receive their individual payments and to make one collective payment to the Superfund at the address noted in Paragraph 17. In such event, the cost of the trust or escrow account may be funded from interest earned by the account or through other appropriate means.]

[NOTE ON USE OF SPECIAL ACCOUNT PAYMENTS: Payments made under Paragraph 15 may be deposited in the Hazardous Substance Superfund or in a site-specific special account within the Hazardous Substance Superfund (more accurately referred to as a “reimbursable account”). The consent order should include clear instructions indicating which portion of the payment will be placed in the Hazardous Substance Superfund and which portion will be deposited in a special account. Under Paragraph 17 as written, 100% of the payment will be deposited in a special account. The following language may be substituted if all or part of the payment will be deposited in the EPA Hazardous Substance Superfund.]²

[If the entire payment will be deposited in the EPA Hazardous Substance Superfund:]

“The total amount to be paid by Respondents pursuant to Paragraph 15 shall be deposited by EPA in the EPA Hazardous Substance Superfund.”

[If the payment will be split between the EPA Hazardous Substance Superfund and a special account:]

“Of the total amount to be paid by Respondents pursuant to Paragraph 15, [‘\$_____’ or ‘_____%’] shall be deposited by EPA in the EPA Hazardous Substance Superfund, and [‘\$_____’ or ‘_____%’] shall be deposited by EPA in the [Site Name] Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.”]

VIII. FAILURE TO MAKE PAYMENT

19. If any Respondent fails to make full payment within the time required by Paragraph 15, that Respondent shall pay Interest on the unpaid balance. In addition, if any Respondent fails to make full payment as required by Paragraph 15, the United States may, in addition to any other available remedies or sanctions, bring an action against that Respondent seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(I) of CERCLA, 42

² When PRPs are performing the response action at the Site, payments to be made by Respondents may, when appropriate, be directed to PRP-managed trust funds or escrow accounts established pursuant to settlements with EPA rather than to an EPA special account.

U.S.C. § 9622(l), for failure to make timely payment.

IX. CERTIFICATION OF RESPONDENT

20. By signing this Consent Order, each Respondent certifies, individually, that, to the best of its knowledge and belief, it:

a. has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. has and will comply fully with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e) [insert, if applicable “, and Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6927”].

X. COVENANT NOT TO SUE BY UNITED STATES

21. In consideration of the payments that will be made by Respondents under the terms of this Consent Order, and except as specifically provided in Section XI (Reservations of Rights by United States), the United States³ covenants not to sue or take administrative action against any of the Respondents pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, [and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973,]⁴ relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect for each Respondent upon receipt of that Respondent's payment as required by Section VII. With respect to each Respondent, individually, this covenant not to sue is conditioned upon:

- a) the satisfactory performance by Respondent of all obligations under this Consent Order; and
- b) the veracity of the information provided to EPA by Respondent relating to Respondent's

³ If any agency other than EPA or DOJ, such as Coast Guard or Federal Emergency Management Agency, has or may incur response costs at the site, such costs must either be addressed in the settlement or must be excluded from the scope of the covenant not to sue.

⁴ Note that when a RCRA Section 7003 covenant is included, Section 7003(d) of RCRA requires EPA to provide an opportunity for a public meeting in the affected area.

involvement with the Site. This covenant not to sue extends only to Respondents and does not extend to any other person.

XI. RESERVATIONS OF RIGHTS BY UNITED STATES

22. The United States reserves, and this Consent Order is without prejudice to, all rights against Respondents with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 21. Notwithstanding any other provision of this Consent Order, the United States reserves all rights against Respondents with respect to:

- a. liability for failure to meet a requirement of this Consent Order;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;⁵ or
- d. liability based upon the ownership or operation of the Site, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Order by Respondent.

23. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against any individual Respondent seeking to compel that Respondent to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if:

- a. information is discovered which indicates that such Respondent contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Respondent no longer qualifies as a *de minimis* party at the Site because [insert volume and toxicity criteria from Paragraph 11 of the Statement of Facts, *e.g.*, “such Respondent contributed greater than ___% of the hazardous substances at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site”]; or

⁵ This natural resource damage reservation must be included unless the Federal Natural Resource Trustee[s] has/have agreed to a covenant not to sue pursuant to Section 122(j)(2) of CERCLA. In accordance with Section 122(j)(1) of CERCLA, where the release or threatened release of any hazardous substances at the site may have resulted in damages to natural resources under the trusteeship of the United States, the Region should notify the Federal Natural Resource Trustee[s] of the negotiations and encourage the Trustee[s] to participate in the negotiations.

[NOTE: The cost overrun reopener in Paragraph 23(b) below should only be included with respect to any respondent who is not paying a premium in lieu of this reopener.]

[b. total response costs incurred or to be incurred at or in connection with the Site by the United States or any other person exceed \$____ [insert total response costs estimate upon which Respondents' payments are based]. [NOTE: If some respondents are paying a premium in lieu of the cost overrun reopener and some are not, insert: "This Paragraph 23(b) shall not apply to those Respondents identified [insert "in Paragraph ____" or "in Appendix ____"] who have elected to pay a premium pursuant to Paragraphs 15 and 16."]

XII. COVENANT NOT TO SUE BY RESPONDENTS

24. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Order⁶ including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State [Commonwealth] of _____, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.⁷

Except as provided in Paragraph 26 (Waiver of Claims) and Paragraph 28 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 22 (c) or (d) or Paragraph 23, but only to the extent that Respondents' claims arise

⁶ If the consent order does not resolve respondents' liability for the site as a whole, the scope of Paragraph 24 may be narrowed to conform to the scope of EPA's covenant not to sue.

⁷ The settlement should, consistent with Paragraph 26, release any claims by Respondents against the United States related to the Site. Where a claim is asserted by a potentially responsible party, or the Region has any information suggesting federal agency liability, all information relating to potential federal liability should be provided to the affected agency and DOJ as soon as possible in order to resolve any such issues, either in this settlement or a future settlement. Settlement of any federal liability will require additional revisions to this document.

from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

25. Nothing in this Consent Order shall be deemed to constitute preauthorization or approval of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

26. Respondents agree not to assert any claims or causes of action (including claims for contribution under CERCLA) that they may have for all matters relating to the Site against each other or any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against such Respondent.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

27. Except as provided in Paragraph 26 (Waiver of Claims), nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Order. Except as provided in Paragraph 26 (Waiver of Claims), the United States and Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

28. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraph 21.

29. The Parties agree that each Respondent is entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), for “matters addressed” in this Consent Order. The “matters addressed” in this Consent Order are [all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person.]⁸

⁸ This definition of “matters addressed” assumes that this consent order is designed to resolve fully respondents' liability at the site. If the intended resolution of liability is narrower in scope, then the definition of “matters addressed” will need to be narrowed.

XIV. PARTIES BOUND

30. This Consent Order shall apply to and be binding upon EPA and upon Respondents and their [heirs,] successors and assigns. Any change in ownership or corporate or other legal status of a Respondent, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the party represented by him or her.

XV. INTEGRATION/APPENDICES

31. This Consent Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Order. The following appendices are attached to and incorporated into this Consent Order:

“Appendix A” is [the list of Respondents].

“Appendix B” is [the map of the Site].

“Appendix C” is [the payment schedule].

[NOTE: List any additional appendices.]

XVI. PUBLIC COMMENT

32. This Consent Order shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), EPA may withdraw or withhold its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper, or inadequate.

XVII. ATTORNEY GENERAL APPROVAL

[NOTE: This Section should be used if Attorney General approval is required for this settlement because total past and projected response costs at the site will exceed \$500,000, excluding interest. The Region should consult with DOJ during the negotiations process and should obtain written DOJ approval of the settlement before publishing notice of the proposed consent order in the Federal Register pursuant to Section 122(i) of CERCLA. The Region should discuss with DOJ any significant comments received during the public comment period. If the Region believes that the consent order should be modified based upon public comment, the Region should discuss with the DOJ attorney assigned to the case

whether the proposed change will require formal re-approval by DOJ.]

33. The Attorney General or [his/her] designee has approved the settlement embodied in this Consent Order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

XVIII. EFFECTIVE DATE

34. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 32 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Consent Order.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By: _____
[Name] [Date]
Regional Administrator, Region ____

[NOTE: If the Regional Administrator has redelegated authority to enter into *de minimis* settlements, insert name and title of delegated official.]

THE UNDERSIGNED RESPONDENT enters into this Consent Order in the matter of [insert U.S. EPA docket number], relating to the [insert site name and location]:

FOR RESPONDENT: _____
[Name]

[Address]

By: _____
[Name] [Date]